



BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2023-0620; FRL-11601-01-R9]

**Air Plan Revisions; Arizona; Arizona Department of Environmental Quality;
Stationary Source Permits**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve two revisions to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona State Implementation Plan (SIP). In this action, we are proposing to approve revisions submitted by the ADEQ governing the issuance of permits for stationary sources in accordance with changes that the EPA has made to its New Source Review (NSR) program regulations under the Clean Air Act (CAA or “the Act”). We are also proposing to determine that with these revisions, the ADEQ’s NSR program satisfies the requirements for the preconstruction review and permitting of major sources and major modifications under part D of title I of the Act for areas designated nonattainment with the 2015 ozone National Ambient Air Quality Standards (NAAQS) with a Marginal classification, for areas and sources within the ADEQ’s permitting jurisdiction. We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Submit your comments, identified by Docket ID No EPA-R09-OAR-2023-0620 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Camille Cassar, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; by phone: (415) 947-4164; or by email to cassar.camille@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

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I. The State’s Submittal

A. *What rules did the State submit?*

The rules that are the subject of the EPA’s current proposed action were adopted by the ADEQ and submitted to the EPA on December 6, 2022 (“December 2022 NSR submittal”). The ADEQ is the governor’s designee for submitting official revisions of the Arizona SIP to the EPA. Table 1 below identifies the rules reviewed in this action for approval into the Arizona SIP.

Table 1 – SIP Submittal

Rule Citation	Title	State Effective Date of Rule to be Added
R18-2-101 (except 20)	Definitions	05/04/2022
R18-2-404	Offset Standards	05/04/2022

The ADEQ's December 2022 NSR submittal was determined to be complete by operation of law, according to Appendix V of 40 CFR part 51, on June 6, 2023.

B. Are there other versions of these rules?

The SIP-approved versions of the submitted rules are identified below in Table 2. The ADEQ's December 2022 NSR submittal also requests that, as part of this action, we remove from the ADEQ portion of the Arizona SIP the previous SIP-approved versions of the same rules. The rules requested for removal from the SIP are listed in Table 2 below.

Table 2 – Current SIP Approved Rules

Rule Addressed in this TSD and Rulemaking	Title	Existing SIP Rule(s) Requested to be Removed from SIP (State Effective Date)
R18-2-101 (except 20)	Definitions	R18-2-101 (except 20) (02/01/2020)
R18-2-404	Offset Standards	R18-2-404 (03/21/2017)

C. What is the purpose of the submitted rules?

The purpose of these submitted revisions for the ADEQ's NSR program is to update its rules to ensure consistency with certain changes that the EPA has made to its NSR program rules, and to address the CAA's statutory and regulatory requirements for Nonattainment New Source Review (NNSR) permit programs in areas designated nonattainment with the 2015 ozone NAAQS with a Marginal classification, for areas and sources within the ADEQ's permitting jurisdiction.

II. The EPA's Evaluation

A. What is the background for this action?

This action focuses on the preconstruction permitting requirements for stationary sources, also called New Source Review, in title I of the CAA and the EPA's

implementing regulations addressing the SIP requirements for state NSR programs at 40 CFR part 51, subpart I.

The action focuses on two necessary revisions to the ADEQ's SIP-approved NSR program rules in accordance with changes that the EPA has made to its NSR program rules and provides the EPA's findings on whether these SIP revisions submitted by the ADEQ meet federal NSR requirements.

Submitted Rule Arizona Administrative Code (A.A.C.) R18-2-101 (except 20) contains a change to the definition of categorical sources for "municipal incinerators" as compared with the prior version of the rule that is currently included in the Arizona SIP. The ADEQ amended its definition of "categorical sources" to include municipal incinerators capable of charging more than 50 tons of refuse per day, as compared with the previous version of the definition, which applied only to those capable of charging more than 250 tons per day. This change was made to ensure consistency with CAA section 169(a) and federal regulatory requirements related to major NSR applicability for municipal incinerators in the EPA's regulations governing state Major NSR programs at 40 CFR 51.165-51.166, as updated by the EPA's 2021 Error Corrections Rule.¹

Submitted Rule A.A.C. R18-2-404 eliminates the ozone interprecursor trading provision that was included in the prior version of the rule that is currently included in the Arizona SIP. This change was made to ensure consistency with the federal rules governing NNSR programs regulating ozone precursors in 40 CFR 51.165, which were also updated as part of the EPA's Error Corrections Rule.²

¹ See 86 FR 37918, 37922 (July 19, 2021).

² See 86 FR 37918, 37924.

The ADEQ requested that the EPA replace the current SIP-approved versions of R18-2-101 and R18-2-404 with the submitted revised versions.

The December 2022 NSR submittal also addresses state NNSR program requirements for the 2015 ozone NAAQS. On October 26, 2015, the EPA issued a final rule revising the NAAQS for ozone, reducing the standards to a level of 0.070 ppm.³ On June 4, 2018, certain portions of Arizona (Yuma and Phoenix-Mesa) were designated and classified as Marginal nonattainment for the 2015 ozone NAAQS.⁴ This designation of certain portions of Arizona as federal ozone nonattainment areas for the 2015 ozone NAAQS triggered the requirement for the ADEQ to provide a SIP submittal addressing the NNSR program requirements for this NAAQS and classification for sources and areas within its permitting jurisdiction.⁵ Therefore, this action also addresses whether the ADEQ's NNSR program, as revised by the rules in this SIP submittal, satisfies the applicable CAA NNSR program requirements for the 2015 ozone NAAQS for the Marginal classification for sources and areas within its permitting jurisdiction.

B. How is the EPA evaluating these rules?

The EPA reviewed the December 2022 NSR submittal for compliance with CAA requirements for SIPs in general as set forth in CAA section 110(a)(2), the requirements for state stationary source preconstruction permitting programs in 40 CFR part 51, subpart I, including certain changes made to those rules in the Error Corrections Rule,

³ 40 CFR 50.19; see 80 FR 65292, 65452-53.

⁴ 83 FR 25776. We note that on October 7, 2022, the EPA issued a final rule determining that while the Yuma nonattainment area attained the 2015 ozone NAAQS, the Phoenix-Mesa nonattainment area failed to attain by the applicable attainment date and therefore would be reclassified as a Moderate nonattainment area for the 2015 ozone NAAQS. 87 FR 60897.

⁵ CAA section 182(a); 40 CFR 51.1314.

and the requirements related to SIP revisions in CAA sections 110(l)⁶ and 193.⁷ Our review also evaluated the ADEQ's NNSR program, as revised by the submitted revised rules, for compliance with the state NNSR program requirements applicable to ozone nonattainment areas with a Marginal classification.

C. Do the rules meet the evaluation criteria?

With respect to procedural requirements, CAA sections 110(a)(2) and 110(l) require that revisions to a SIP be adopted by the state after reasonable notice and public hearing. Based on our review of the public process documentation included in the December 2022 NSR submittal, we find that the ADEQ has provided sufficient evidence of public notice, opportunity for comment and a public hearing prior to adoption and submittal of the rules to the EPA.

We have evaluated the rule revisions in the December 2022 NSR submittal with respect to the CAA requirements for SIPs in general as set forth in CAA section 110(a)(2), the requirements for state stationary source preconstruction permitting programs in 40 CFR part 51, subpart I, including recent changes to the requirements for State stationary source preconstruction permitting programs in 40 CFR part 51, subpart I, made in the EPA's Error Corrections Rule, as described above, and we find that the submittal satisfies these requirements. In addition, we have evaluated the ADEQ's NNSR program, as revised by the submitted revised rules, for compliance with the NNSR requirements applicable to ozone nonattainment areas with a Marginal classification, and

⁶ CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing prior to adoption and submittal by states to the EPA and prohibits the EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

⁷ CAA section 193 prohibits the modification of any SIP-approved control requirement in effect before November 15, 1990 in a nonattainment area, unless the modification ensures equivalent or greater emission reductions of the relevant pollutants.

have determined that this program satisfies the applicable CAA and regulatory requirements for NNSR permit programs under part D of title I of the Act for all relevant ozone NAAQS, specifically including the requirements applicable to areas designated nonattainment for the 2015 ozone NAAQS with a Marginal classification, for the areas and sources within the ADEQ's permitting jurisdiction.

Regarding the additional substantive requirements of CAA sections 110(l) and 193, our action will result in a more stringent SIP, while not relaxing any existing provision contained in the SIP. We have concluded that our action would comply with section 110(l) because our approval of these rules will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other CAA applicable requirement. In addition, our approval of these rules will not relax any pre-November 15, 1990 requirement in the SIP, and therefore changes to the SIP resulting from this action ensure greater or equivalent emission reductions of the nonattainment pollutants and their precursors in the District; accordingly, we have concluded that our action is consistent with the requirements of CAA section 193.

Our TSD contains a more detailed discussion of our analysis of the December 2022 NSR submittal.

III. Proposed Action and Public Comment

As authorized in section 110(k)(3) of the Act, the EPA is proposing to fully approve the submitted rules into the Arizona SIP because they fulfill all relevant CAA requirements, and to remove the prior version of these rules from the SIP. We have concluded that our approval of the submitted rules would comply with the relevant provisions of CAA sections 110(a)(2), 110(l), 165, 172(c)(5), 173, and 193, and 40 CFR

51.160-51.166. We are also proposing to find that with the submitted rule revisions, the ADEQ's NSR program satisfies the requirements for the preconstruction review and permitting of major sources and major modifications under part D of title I of the Act for areas designated nonattainment with the 2015 ozone NAAQS with a Marginal classification, for the areas and sources within the ADEQ's permitting jurisdiction. If we finalize this action as proposed, our action will be codified through revisions to 40 CFR 52.220a (Identification of plan-in part).

We will accept comments from the public on this proposal until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the following the ADEQ rules: A.A.C. R18-2-101 (except 20) and R18-2-404, as described in Table 1 of this proposal. These rules are intended to address the CAA's statutory and regulatory requirements for New Source Review permit programs for major sources emitting nonattainment air pollutants and their precursors under parts C and D of title I of the CAA. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) (EO 12898) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The ADEQ did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 20, 2023.

Martha Guzman Aceves,

Regional Administrator,

Region IX.

[FR Doc. 2023-28528 Filed: 12/29/2023 8:45 am; Publication Date: 1/2/2024]